UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/508,749	04/14/2005	James Martin	P/63564	8352

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EXAMINER
WANG, QUAN ZHEN

ART UNIT	PAPER NUMBER
2613	

NOTIFICATION DATE	DELIVERY MODE
09/04/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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	Application No.	Applicant(s)
Advisory Action ***Before the Filing of an Appeal Brief***	10/508,749	MARTIN, JAMES
	Examiner	Art Unit
	QUAN-ZHEN WANG	2613

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 July 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

    a) ☒ The period for reply expires *3 months* from the mailing date of the final rejection.

    b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

    Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

    (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

    (b)☐ They raise the issue of new matter (see NOTE below);

    (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

    (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

        NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

    The status of the claim(s) is (or will be) as follows:

    Claim(s) allowed: _____.

    Claim(s) objected to: _____.

    Claim(s) rejected: *9-16*.

    Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.

13. ☐ Other: _____.

                                   /Quan-Zhen Wang/
                                   Primary Examiner, Art Unit 2613

Continuation of 11. does NOT place the application in condition for allowance because:

   Applicant's other arguments filed on 7/22/2009 have been carefully considered but are not persuasive.

   Regarding claim 9, Applicant argues, "When the claims are analyzed, the fact that claim 9 clearly recites: "the connections utilizing the network nodes and network links" is ignored, and the terms "link" and "connection" are taken by the Examiner to mean the same thing. It is clear, however, from the wording of claim 9 that these are two different terms. A connection is established over a link or links." While Chang clearly discloses "links" between nodes and explicitly discloses connections are established over the links. Specifically, Chang discloses:

   "[0119] Thus, NC&M 220 has stored at any instant the global information necessary to formulate routes to carry the incoming packet traffic by the network elements. Accordingly, periodically NC&M 220 determines the routing information in the form of, for example, global routing tables, and downloads the global routing tables to each of the elements using supervisory channels 221, 222, ... The global routing tables configure the ports of the network elements to create certain communication links. For example, NC&M 220 may determine, based upon traffic demand and statistics, that a fiber optic link from New York City to Los Angeles (network elements 501 and 504, respectively) is presently required, and the link will be composed, in series, of: W1 coupling port 511 of element 501 to port 513 in network element 502; W1 coupling port 514 of element 502 to port 515 of element 503; and W2 coupling port 516 of element 503 to port 517 of element 504. Then, input packet 520 incoming to network element 501 (New York City) and having a destination of network element 504 (Los Angeles) is immediately routed over this established link. At network element 504, the propagated packet is delivered as output packet 521 via client interface port 518."

   "[0104] Now with reference to FIG. 2, which is the same as FIG. 2 of Chang, optical layer 120 of FIG. 1 is shown in more detail including the basic technique for setting up a fast connection in optical network 200, composed of network elements 121-125 (Node 1-Node 5); the setup uses optical signaling header 210 for the accompanying data payload 211. This technique combines the advantages of circuit-switched based WDM and packet-switched based IP technologies. Signaling information is added in the form of an optical signal header 210 which is carried in-band within each wavelength in the multi-wavelength transport environment. Optical signaling header 210, composed of a label containing routing and control information such as the source, destination, priority, and the length of the packet, propagates through optical network 200 preceding data payload 211. Each WDM network element 121-125 senses optical signaling header 210, looks-up a connection table (discussed later), and takes necessary steps such as cross-connections, add, drop, or drop-and-continue. The connection table is constantly updated by continuous communication between NC&M 220 and WDM network elements 121-125. Data payload 211, which follows optical signaling header 210, is routed through a path in each network element (discussed later) as established by the connection. With the arrangement of FIG. 2, there is no need to manage the time delay between optical signaling header 210 and data payload 211, shown by T in FIG. 2, because each network element provides the optical delay needed for the short time required for connection set-up within each network element via delay of an interposed fiber. Moreover, the format and protocol of the data payload is independent of that of the header, that is, for a given network whereas the format and protocol of the header are pre-determined, the format and the protocol of the data payload can be the same as or different from those of the header."

   Therefore, Chang's disclosure clearly reads on the claimed "links" and "connections".

   Applicant argues, "Smith disclosed a fixed link, and not an unreconfigurable connection". However, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See In re Keller, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); In re Merck & Co., 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). For the instant case, Chang discloses a communication system comprising: a communication network comprising network nodes and network links between the network nodes; and a network management system for allocating connections to the network, the connections utilizing the network nodes and the network links. Chang differs from the claimed invention in that Chang does not specifically disclose that the network management storing information on network which current connections are reconfigurable and which are not. However, it is well known in the art to include unreconfigurable connections in a network. For example, Smith discloses to include unreconfigurable connections in a network (paragraph 0079, "the first link between node A and the first intermediate node along the path is fixed") and the reconfiguration by the network management system is inherently constrained to reconfiguration of only the reconfigurable connections (paragraph 0079). Therefore, it would have been obvious for one of ordinary skill in the art at the time when the invention was made to configure the system of Chang to include connections that are reconfigurable and connections that are not reconfigurable and to store the information in the network management system. One of ordinary skill in the art would have been motivated to do so in order to include pre-provisioned transponders in some of the nodes in the network.

   Furthermore, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function alone (see MPEP 2114). If a functional limitation can be performed by the prior art structure, a prima facie case is established (see In re Swinehart, 169 USPQ 226 (CCPA 1971); In re Schreiber, 44 USPQ2d 1429 (Fed. Cir. 1997)). Chang alone discloses all of the claimed structures and the claimed functional limitations can be obviously performed by the structure, a prima facie case has been clearly established.

   In view of the above discussions, the combination of the prior art references discloses each and every claimed limitation, the rejection of claim 9 still stands.

   Regarding claims 11 and 12, Applicant argues that "the reconfigurable is performed on an existing connection in the network", that is exactly done by Chang. Please note that the connections are established over a link or links. Chang clearly discloses changing from one connection to another connection (alternative wavelength).

   Regarding claim 14, please note that state of communication lines inherently including the communication line is a active or a standby path. Furthermore, the limitation is the claim is solely functional which can be performed with the structures disclosed by Chang because the claim does not distinguish from Chang in structures.

   Regarding claim 15, please note the alternative wavelength of Chang is used to reconfigure and existing connection. Furthermore, the limitation is the claim is solely functional which can be performed with the structures disclosed by Chang because the claim does not distinguish from Chang in structures.

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In view of the above discussions, the combination of the prior art references discloses each and every claimed limitation, the rejections of claims 11,12,14, and 15 still stand..